

Kentucky Statutes

286.4-410 Definitions; application of subtitle

(1) As used in this subtitle, unless the context requires otherwise:

(a) “Applicant” means a person filing an application under this subtitle;

(b) “Consumer loan company” means a person licensed under this subtitle to engage in the business of making loans to a consumer for personal, family, or household use in the amount or value of fifteen thousand dollars (\$15,000) or less;

(c) “Control” means the power to direct the management or policies of a licensee or applicant, whether through ownership of securities, by contract, or otherwise;

(d) “Executive officer” means a natural person holding the title or responsibility of president, vice president, chief executive officer, chief financial officer, chief operational officer, or chief compliance officer;

(e) “Licensee” means a person licensed under this subtitle;

(f) “Managing principal” means a natural person who meets the requirements of KRS 286.4-450 and actively participates in and is primarily responsible for the operations of a licensee;

(g) “Material fact” means a fact that a reasonable person knows, or should know, that could reasonably be expected to influence any decision or action taken by the commissioner under this subtitle;

(h) “Nationwide consumer reporting agency” means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined by Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a(p); and

(i) “Person in control of a licensee or applicant” means, with respect to an applicant or licensee, any of the following:

1. A director, general partner, or executive officer;
2. In the case of a limited liability company, a managing member or manager;
3. Any person who directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of voting securities;
4. Any person who has the power to sell or direct the sale of twenty-five percent (25%) or more of a class of voting securities;
5. In the case of a partnership or limited liability company, any person that has the right to receive twenty-five percent (25%) or more of the capital upon dissolution; or

6. Any person that exercises control.

(2) This subtitle shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan associations, agricultural cooperative associations, credit unions, industrial loan companies, or licensed pawnbrokers. This subtitle does not apply to the purchase or acquisition, directly or indirectly, of notes, chattel mortgages, installment or conditional sales contracts, embodying liens or evidencing title retention arising from the bona fide sale of goods or services by a seller of the goods or services.

Credits

HISTORY: 2019 c 120, § 1, eff. 6-27-19; 2010 c 24, § 656, eff. 7-15-10; 1984 c 388, § 7, eff. 7-13-84; 1960 c 204, § 1

286.4-420 License required for finance companies; evidence of existing licenses

No person shall, without first obtaining a license from the commissioner, engage in the business of making loans in the amount or of the value of fifteen thousand dollars (\$15,000) or less at a greater rate of interest, or consideration therefor than otherwise permitted by law. All persons licensed under the provisions of this subtitle on July 15, 1982, are licensed to make loans pursuant to this subtitle, and the commissioner shall, upon request, deliver evidence of licensing within ninety (90) days of such request.

Credits

HISTORY: 2010 c 24, § 657, eff. 7-15-10; 1982 c 53, § 2, eff. 7-15-82; 1980 c 107, § 1; 1970 c 48, § 1; 1960 c 204, § 2

**286.4-425 Commissioner's coordination with State Regulatory Registry and other agencies
Effective: June 27, 2019**

(1) As used in this section, "registry" means the State Regulatory Registry, LLC, or its successor organization.

(2) When an application, report, or approval request is required under this subtitle to be filed with the commissioner, the commissioner may require, by administrative regulation or order, that the filing, including any applicable fees and any supporting documentation, be submitted to:

(a) The State Regulatory Registry, LLC, or its successor organization;

(b) The registry's parent, affiliate, or operating subsidiary; or

(c) Other agencies or authorities as part of a nationwide licensing system, which may act as an agent for receiving, requesting, and distributing information to and from any source directed by the commissioner.

(3) The commissioner may report violations of this subtitle, enforcement actions, and other relevant information to the registry, notwithstanding any provision of this subtitle to the contrary.

(4) The commissioner may use the registry as an agent for requesting information from and distributing information to the United States Department of Justice or other governmental agencies.

Credits

HISTORY: 2019 c 120, § 14, eff. 6-27-19

286.4-430 Form of application; contents

(1) Each application for a license under this subtitle shall be made in writing, under oath or affirmation, in a form the commissioner prescribes.

(2) Each application shall contain the following information:

(a) In the case of an applicant that is a natural person, the name, electronic mail address, and physical address of the residence and place of business of both the applicant and, if applicable, the managing principal;

(b) In the case of an applicant that is a partnership, limited liability company, or association:

1. Names, electronic mail addresses, and physical addresses of every member and managing principal; and

2. The physical address where the business is to be conducted;

(c) In the case of an applicant that is a corporation:

1. The names, electronic mail addresses, and physical addresses of the principal officers, directors, and managing principal; and

2. The physical address of the place where the business is to be conducted; and

(d) Such additional information as the commissioner prescribes.

Credits

HISTORY: 2019 c 120, § 2, eff. 6-27-19; 2010 c 24, § 658, eff. 7-15-10; 1998 c 198, § 1, eff. 7-15-98; 1960 c 204, § 3, eff. 6-16-60

286.4-440 Application and license fees

Each applicant, at the time of making application, shall pay the following to the commissioner:

(1) Five hundred dollars (\$500) as a fee for investigating the application to conduct business as a consumer loan company in Kentucky; and

(2) The additional sum of five hundred dollars (\$500) as an annual license fee for each location for the period terminating on the last day of the current calendar year.

Credits

HISTORY: 2019 c 120, § 3, eff. 6-27-19; 2010 c 24, § 659, eff. 7-15-10; 2000 c 157, § 1, eff. 7-14-00; 1998 c 198, § 9, eff. 7-15-98; 1960 c 204, § 4, eff. 6-16-60

286.4-450 Bonding requirements for applications submitted on or after January 1, 2020; demonstration of financial condition; managing principal; background check; incomplete application; approval or rejection of application; time limit; appeal; hearing; eligibility if license denied

(1) For any new application for a license, submitted on or after January 1, 2020, to qualify for a license, an applicant shall satisfy and maintain, for the duration of licensure under this subtitle, the following bonding requirements, which shall cover all licensed locations:

(a) The applicant shall deposit with the commissioner, in a form directed by the commissioner, one (1) of the following instruments that satisfy the requirements of paragraph (b) of this subsection:

1. An irrevocable letter of credit;
2. A corporate surety bond;
3. Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this state and has deposited United States currency in an amount that satisfies the requirements of paragraph (b) of this subsection, with a signed and notarized acknowledgement from the financial institution; or
4. A savings certificate of a federally insured financial institution in this state that is not available for withdrawal except by direct order of the commissioner, with a signed and notarized acknowledgement from the financial institution. Interest earned on the certificate shall accrue to the applicant;

(b) The instruments identified in paragraph (a) of this subsection shall:

1. Be made payable to the commissioner;
2. Be in the following amounts:
 - a. One hundred thousand dollars (\$100,000), if the applicant is privately held; or
 - b. Two hundred fifty thousand dollars (\$250,000), if the applicant is publicly traded;

3. Provide for claim on the instrument by the commissioner who has a cause of action under this subtitle. The total liability of the surety, cumulative or otherwise, shall not exceed the amount specified in the instrument; and

4. Be available for the recovery of expenses, fines, and fees levied or imposed by the commissioner under this subtitle, and for losses or damages that are determined by the commissioner to have been incurred by any customer as a result of the applicant's or licensee's failure to comply with the requirements of this subtitle; and

(c) No claim shall be maintained to enforce any liability on an instrument under this subsection unless the claim is brought within three (3) years after the act upon which it is based.

(2) (a) For any application submitted on or after January 1, 2020, including renewal applications, an applicant or licensee shall demonstrate that its financial condition is sufficient to effectively conduct the business of a licensee in one (1) or more licensed Kentucky locations by having and maintaining, for the duration of licensure under this subtitle:

1. If the applicant is privately held:

a. A total net worth of at least fifty thousand dollars (\$50,000), when receivables are one million dollars (\$1,000,000) or less; or

b. A total net worth of at least one hundred thousand dollars (\$100,000), when receivables are more than one million dollars (\$1,000,000); or

2. If the applicant is publicly traded, a total net worth in excess of two hundred fifty thousand dollars (\$250,000).

(b) For the purposes of this subsection, receivables shall be determined upon the initial application, or for renewal applications, based on the most recent annual report filed under KRS 286.4-590.

(3) (a) Each applicant shall have, at the time of making application and for the duration of licensure under this subtitle, at least one (1) managing principal.

(b) Prior to a change in managing principal, each licensee shall file a written request for the change with the department. The written request shall include sufficient proof that the new managing principal has experience to satisfy the requirements of this subsection, and the commissioner may deny the requested change.

(c) Each person named as a managing principal in an application or written request under this subsection shall provide the commissioner with sufficient proof that the managing principal has at least two (2) years of lending experience working in a financial institution. The commissioner shall determine from the application or written request whether an

applicant has sufficient experience to satisfy this requirement and may withhold approval based on this determination.

(4) (a) At the time of application, the commissioner shall require each managing principal and person in control of an applicant or licensee to submit to a criminal background check.

(b) The cost of each records background check shall be borne by the applicant or licensee.

(5) The commissioner may deem an application incomplete if the applicant fails to pay any fee, or submit any documentation or information, required under this subtitle within sixty (60) days from the date the application was filed. After sixty (60) days, if the application is incomplete, it shall be considered abandoned.

(6) (a) Once a completed application is filed, and after an investigation, the commissioner shall issue to the applicant a license to make loans in accordance with this subtitle, if the commissioner finds that the financial responsibility, financial condition, experience, character, and general fitness of the applicant reasonably demonstrate that the applicant, its managing principal, and each person in control of the applicant will operate honestly, fairly, and efficiently in accordance with the purposes of this subtitle.

(b) If the commissioner finds that the applicant does not meet the requirements under paragraph (a) of this subsection, he or she shall not issue a license and shall return any license fee paid by the applicant, but shall retain the five hundred dollars (\$500) investigation fee to cover the cost of investigating the application.

(c) When determining whether an applicant has satisfied the qualifications required under this subsection, the commissioner shall consider the grounds set forth in KRS 286.4-490.

(d) The commissioner shall approve or deny every application for license within sixty (60) days from the receipt of a completed application, unless the time is extended by a written agreement between the applicant and the commissioner.

(e) If the commissioner denies a license, the applicant may, within twenty (20) days from the date of denial, file a written petition requesting a hearing to appeal with the office of the commissioner. Upon the timely filing of a petition to appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the applicant does not file a petition within the required time frame, he or she shall be deemed to have waived the right to appeal.

(f) The official record of the hearing shall be filed in the office of the commissioner as a public record, open to public inspection.

(7) Any applicant, or person in control of an applicant, that has a license denied by the commissioner shall not be eligible to apply for a license under this subtitle, or serve as a person in control of an applicant or licensee, until the expiration of one (1) year from the date a final order denying the license is entered by the commissioner.

Credits

HISTORY: 2019 c 120, § 4, eff. 6-27-19; 2010 c 24, § 660, eff. 7-15-10; 2000 c 157, § 2, eff. 7-14-00; 1998 c 198, § 2, eff. 7-15-98; 1996 c 318, § 217, eff. 7-15-96; 1960 c 204, § 5, eff. 6-16-60

286.4-460 License; contents; transfer; place of business; change; name on license

- (1) Every license shall state the physical address of the office at which the business is to be conducted, the name of the licensee, any assumed names used by the licensee at that location, and the initial date of licensure.
- (2) The license shall not be transferable or assignable without the prior written approval of the commissioner pursuant to KRS 286.4-465. Not more than one (1) place of business shall be maintained under the same license but the commissioner may issue more than one (1) license to the same licensee upon compliance with all the provisions of this subtitle for each license, except that nothing herein shall be deemed to require a license for any place of business devoted to accounting, recordkeeping, or administrative purposes.
- (3) Whenever a licensee desires to change the physical place of business to another location, the licensee shall give written notice to the commissioner at least fifteen (15) days prior to the location change.
- (4) No licensee shall transact business for which this subtitle requires a license under a name that is not designated on the license, unless the licensee has given written notice to the commissioner at least thirty (30) days prior to the name change.

Credits

HISTORY: 2019 c 120, § 5, eff. 6-27-19; 2000 c 157, § 3, eff. 7-14-00; 1960 c 204, § 6, eff. 6-16-60

286.4-465 Approval of change of control; application; fees; determination of whether proposed transaction constitutes change of control

- (1) As used in this section, “change of control” means any of the following:
 - (a) A transfer of ownership interest that results in giving a person the power to direct the management or policies of a licensee;
 - (b) For publicly traded licensees, a transfer of at least ten percent (10%) of the outstanding voting stock;
 - (c) For privately held licensees, a transfer of at least twenty-five percent (25%) of the outstanding voting stock; or
 - (d) The acquisition of an existing licensed location or locations by a licensee.

(2) (a) Except as provided in paragraph (b) of this subsection, a change of control of a licensee or an existing licensed location shall be approved in writing by the commissioner prior to the change.

(b) For the following changes of control, a licensee shall file an application with the commissioner within fifteen (15) days after learning of the change of control:

1. A change of control that results when a person acquires control of a licensee by devise or descent;
2. A change of control that results when a person acquires authority to act:
 - a. As a personal representative, custodian, guardian, conservator, or trustee;
 - b. As an officer appointed by a court of competent jurisdiction; or
 - c. By operation of law;
3. A change of control that results from the public offering of securities; and
4. A change of control that has been exempted by regulation or order of the commissioner, if the commissioner makes a finding that it is in the public interest to do so.

(3) The licensee shall make an application to the commissioner for approval of a change of control on a form prescribed by the commissioner.

(4) (a) For changes of control resulting in an existing licensee obtaining control of an existing licensed location or locations, the application fee shall be one hundred dollars (\$100) per location, except that the total fee for a single application shall not exceed one thousand dollars (\$1,000) regardless of the number of locations acquired.

(b) For all other changes of control, the application fee shall be the fees set forth in KRS 286.4-440.

(5) The commissioner shall approve an application for a change of control if the commissioner determines that the requirements of this subtitle for obtaining a license will be satisfied after the change of control.

(6) (a) Before filing an application for approval of a change of control, a licensee may submit a written request for a determination from the commissioner as to whether a proposed transaction constitutes a change of control.

(b) If the commissioner determines that a proposed transaction would not constitute a change of control, then the commissioner shall respond in writing to that effect, and the licensee shall not be subject to the requirements of this section.

(c) In the event the commissioner does not make a determination as to whether a proposed transaction would constitute a change of control within sixty (60) days from the date of the request, then no application for a change of control shall be required.

Credits

HISTORY: 2019 c 120, § 16, eff. 6-27-19

286.4-470 Limitation on locations at which business may be conducted; construction of subtitle regarding types of loans

(1) No licensee shall conduct the business authorized by this subtitle in any office, room, or place of business in which any other business, except purchase of retail and installment sales contracts, tax preparation, and motor club memberships, is solicited or engaged in, or in association or conjunction therewith, except upon a written authorization from the commissioner. The commissioner shall have sixty (60) days to either approve or deny the written authorization request.

(2) Nothing in this subtitle shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated, nor to prohibit the making and collecting of loans by mail.

(3) Nothing in this subtitle shall be construed to limit the ability of any licensee to make a loan or loans in the principal amount greater than fifteen thousand dollars (\$15,000) at the licensed location at the same rates as provided in KRS 360.010.

Credits

HISTORY: 2019 c 120, § 6, eff. 6-27-19; 2010 c 24, § 661, eff. 7-15-10; 1998 c 198, § 3, eff. 7-15-98; 1960 c 204, § 7, eff. 6-16-60

286.4-480 Duration of license; payment of annual fee; expiration; reinstatement

(1) Each license shall remain in full force and effect until it is surrendered by the licensee, suspended, revoked, or expired as provided in this subtitle. Each licensee shall, on or before each December 31, pay to the commissioner the annual license fee for the next succeeding calendar year.

(2) Failure of a licensee to pay the annual license fee required by this section shall result in the expiration of the licensee's license on January 1 of the following year.

(3) The commissioner may reinstate an expired license if, within thirty-one (31) days of expiration, the licensee:

(a) Satisfies all requirements set forth in this subtitle; and

(b) Pays a one hundred dollar (\$100) late fee.

(4) Any reinstatement under subsection (3) of this section shall be retroactive to January 1 of the calendar year in which it expired.

Credits

HISTORY: 2019 c 120, § 7, eff. 6-27-19; 2010 c 24, § 662, eff. 7-15-10; 1960 c 204, § 8, eff. 6-16-60

286.4-490 Reasons for adverse action or cease-and-desist order; locations at which adverse action applies; eligibility if license revoked; effect of adverse action; complaint; relief; civil penalty

(1) For the purposes of this section, “adverse action” means the suspension of, revocation of, conditioning or restricting of, or refusal to issue or renew a license or acceptance of the surrender of a license in lieu of a revocation or suspension.

(2) The commissioner may take adverse action against a licensee, applicant, or person in control of a licensee or applicant, or issue a cease-and-desist order to one of those persons, if the commissioner finds, after a thorough investigation, that the person:

(a) Has failed to open an office within one hundred twenty (120) days from the date a license is granted unless good cause is shown;

(b) Has committed fraud or made a misrepresentation of material fact;

(c) Does not meet, has failed to comply with, or has violated any provisions of this subtitle, or any administrative regulation or order of the commissioner issued under the subtitle;

(d) Has made a false statement of material fact in the application for a license or failed to give a truthful reply to a question in the application;

(e) Has demonstrated incompetence or untrustworthiness to act as a licensee;

(f) Is unfit, through lack of financial responsibility or experience, to conduct the business of a licensee;

(g) Does not conduct business in accordance with the law or conducts business by a method that includes activities that are illegal where performed;

(h) Is insolvent;

(i) Is the subject of an active administrative cease-and-desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the financial services industry;

(j) Has made or caused to be made to the commissioner a false representation of material fact or has suppressed or withheld from the commissioner information that the applicant or

licensee possesses and which, if submitted, would have rendered the applicant or licensee ineligible to be licensed under this subtitle;

(k) Has refused to permit a lawful examination or investigation by the commissioner, or has refused or failed, within a reasonable time, to furnish to the commissioner any information or records, or make any report, that may be required under this subtitle;

(l) Has been convicted of a felony;

(m) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty;

(n) Has had any license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated under the laws of this state, or has surrendered, withdrawn, or terminated any license, registration, or claim of exemption issued or registration granted by this state under threat of administrative action;

(o) Has knowingly employed or contracted with a person who has failed to obtain any necessary license or registration related to the financial services industry or has had a license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated in this state or another jurisdiction;

(p) Has failed to pay any fee required under this subtitle;

(q) Has failed to comply with an administrative or court order imposing child support obligations;

(r) Has failed to pay state income taxes or comply with any administrative or court order directing the payment of state income tax;

(s) Has filed for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110, within the last ten (10) years;

(t) Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;

(u) Has violated any of the recordkeeping and reporting requirements of the United States government, including 31 U.S.C. secs. 5311 to 5332; or

(v) No longer meets the requirements of this subtitle to hold a license.

(3) If the reason for adverse action taken by the commissioner at any one location is generally applicable to all locations operated by a licensee, the commissioner may apply the adverse action to all licenses issued to a licensee.

(4) Any person, or person in control of a licensee, who has had a license revoked by the commissioner shall not be eligible to apply for a license under this subtitle or to serve as a person in control of a licensee until after expiration of two (2) years from the date a final order of revocation is entered by the commissioner. A person whose license has been revoked twice shall be deemed permanently revoked and shall not be eligible for a license, or to serve as a person in control of a licensee, under this subtitle.

(5) A person, or person in control of a licensee, against whose license adverse action has been taken under this section shall not:

(a) Participate in any business for which a license is required under this subtitle; or

(b) Engage in any business activity on the premises where a licensee is conducting its business without prior written approval of the commissioner.

(6) (a) Adverse action taken against a license, or the expiration of a license, shall not abrogate or modify:

1. The civil or criminal liability of a licensee for acts committed prior to the surrender or expiration; or

2. The obligation of any preexisting contract between a licensee and a customer.

(b) The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license.

(7) (a) If the commissioner has reason to believe from evidence satisfactory to the commissioner that a person has violated, or is about to violate, a provision in this subtitle, the commissioner may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for temporary or permanent relief against any person.

(b) The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief and any other relief that the court deems proper.

(c) Any person who violates a temporary restraining order or injunction issued by the court, in addition to being held in contempt of court, may be assessed a civil penalty under KRS 286.4-990 by the court.

Credits

HISTORY: Repealed and reenacted by 2019 c 120, § 8, eff. 6-27-19; 2010 c 24, § 663, eff. 7-15-10; 1996 c 318, § 218, eff. 7-15-96; 1960 c 204, § 9, eff. 6-16-60

286.4-495 Emergency orders; grounds; hearing; duration of emergency order

(1) The commissioner may enter an emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or hearing if, after a thorough investigation and written findings, it appears upon grounds satisfactory to the commissioner that the licensee has engaged or is engaging in unsafe, unsound, or illegal practices that pose an imminent threat to the public interest.

(2) The commissioner may enter an emergency cease-and-desist order against an unlicensed person if, after a thorough investigation, it appears upon grounds satisfactory to the commissioner that the unlicensed person has engaged or is engaging in unsafe or unsound practices, or actions contrary to this subtitle, that pose an imminent threat to the public interest.

(3) One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the commissioner that:

(a) The licensee has willfully failed to comply with more than one (1) of the requirements of this subtitle;

(b) The licensee is in such financial condition that it cannot continue in business with safety to its customers;

(c) The licensee, or a person in control of the licensee, has been found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an active administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;

(d) The licensee has made a misrepresentation of material fact to, or concealed an essential or material fact from, a person in the course of doing business, or has engaged in a course of business that has worked or tended to work a fraud or deceit upon a person or would so operate;

(e) The licensee has refused to permit a lawful examination or investigation, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the commissioner in connection with a lawful investigation or examination; or

(f) The licensee has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state, or has surrendered or terminated any license, registration, or claim of exemption issued by this state under threat of administrative action.

(4) An emergency order issued under this section, compliant with KRS 13B.125, becomes effective when served by the commissioner. The emergency order shall be delivered by personal service or certified mail to the last known address of every affected party.

(5) A person aggrieved by an emergency order issued by the commissioner under this section may request an emergency hearing. The request for hearing shall be filed with the commissioner within twenty (20) days of service of the emergency order.

(6) Upon receipt of a timely written request for an emergency hearing, an emergency hearing shall be conducted as set forth in KRS 13B.125.

(7) An emergency order issued under this section shall remain in effect until it is stayed, withdrawn, or superseded by an order of the commissioner or until it is terminated by a court order.

Credits

HISTORY: 2019 c 120, § 19, eff. 6-27-19

286.4-500 Notice of license denial; administrative complaint; hearings and final orders; findings; service by certified mail

(1) (a) Notice of entry of any order denying a license shall be in writing and served personally or sent by certified mail to the last known address of the applicant.

(b) A person whose application has been denied may, within twenty (20) days of service of the notice, submit a written petition to the commissioner requesting a hearing. The hearing shall be held in accordance with KRS Chapter 13B.

(c) If no written petition is received, the commissioner may enter a final order denying the license.

(2) (a) The commissioner may file an administrative complaint against any person or licensee that the commissioner believes has or may have violated this subtitle and the violation of which is subject to the penalties set forth in KRS 286.4-490 or 286.4-990.

(b) 1. The commissioner shall serve an administrative complaint against a person or licensee personally or by certified mail, return receipt requested, postage prepaid, to the last known address of each person or licensee named in the complaint.

2. The person or licensee named in the complaint shall be entitled to a hearing on the complaint, held in accordance with KRS Chapter 13B. A written request for a hearing shall be submitted to the department, along with a written answer to the complaint, within twenty (20) days of being served the complaint.

3. If a written answer and request for hearing are not filed within twenty (20) days of being served the complaint, the person or licensee shall be deemed to have waived the hearing and the commissioner may enter a final order granting the relief requested in the complaint.

(3) Whenever the commissioner denies any application for a license or assesses any of the penalties set forth in KRS 286.4-490 or 286.4-990, the commissioner shall file in his or her office a written order to that effect, stating his or her findings with respect to the order and the reasons for the action.

(4) Any final order shall be served in the same manner as an administrative complaint under subsection (2) of this section.

(5) Service by certified mail under this subtitle shall be deemed complete as provided in KRS 13B.050(2).

Credits

HISTORY: 2019 c 120, § 9, eff. 6-27-19; 2010 c 24, § 664, eff. 7-15-10; 1960 c 204, § 10, eff. 6-16-60

286.4-505 Administrative hearing for person or licensee aggrieved by final decision of commissioner

Unless a remedy is otherwise specifically provided in this subtitle, any licensee or person aggrieved by a final decision of the commissioner issued pursuant to this subtitle may, within twenty (20) days of service of notice of the decision, request an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

Credits

HISTORY: 2019 c 120, § 20, eff. 6-27-19

286.4-520 Prohibited advertisements and statements

No licensee shall advertise, print, display, publish, distribute, broadcast or televise, or permit to be advertised, printed, displayed, published, distributed, broadcast or televised, any statement or representation with regard to the rates, terms, or conditions for making loans in the sum of fifteen thousand dollars (\$15,000) or less, which is false, misleading, or deceptive.

Credits

HISTORY: 1986 c 331, § 44, eff. 7-15-86; 1972 c 203, § 49; 1960 c 204, § 12

286.4-530 Basic, default, and deferment charges; prohibition against division of loan and excessive charges

(1) Every licensee may lend any sum of money not exceeding fifteen thousand dollars (\$15,000), excluding charges, and may charge, contract for, and receive thereon charges not in excess of three percent (3%) per month on any loan where the original principal amount of the loan is not in excess of three thousand dollars (\$3,000) and two percent (2%) per month on any loan where the original principal amount of the loan exceeds three thousand dollars (\$3,000). Such charges shall be computed in advance at the agreed rate on scheduled unpaid principal balances of the cash advance on the assumption that all scheduled payments will be made when due. The total

amount of such precomputed charges shall be added to the original cash advance and the resulting sum shall become the face amount of the note. Every payment may be applied to the combined total of the cash advance and precomputed charges until the contract is paid in full.

(2) For the purposes of computation, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month and if there is no such corresponding date then to the last day of such month, and a day shall be considered one-thirtieth ($1/30$) of a month when such computation is made for a fraction of a month. The portion of the charges applicable to any particular monthly installment period, as originally scheduled or following a deferment, shall bear the same ratio to the total charges, excluding any adjustments made pursuant to subsection (3) of this section, as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled originally by the contract of loan.

(3) A licensee and borrower may agree that the first installment date may be not more than fifteen (15) days more than one (1) month and the amount of such installment may be increased by one-thirtieth ($1/30$) of the portion of the charges applicable to a first installment period of one (1) month for each extra day.

(4) If one-half ($1/2$) or more of any installment remains unpaid more than seven (7) days after it is due, the licensee may charge and collect a default charge not exceeding two cents (2ϕ) for each dollar of the scheduled installment, and such charge may be collected for each full month the installment remains unpaid.

(5) If the payment of all wholly unpaid installments on which no default charge has been collected is deferred one (1) or more full months, the licensee may charge and collect a deferment charge not exceeding two cents (2ϕ) for each one dollar ($\$1$) of the sum of the installments so deferred, multiplied by the number of months the maturity of the contract is extended; provided, however, that such number of months shall not exceed the number of installments which are due and wholly unpaid or due within fifteen (15) days from the date of deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract; provided, however, that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. At the time a deferment is made the borrower shall be given a statement or receipt showing the amount of the deferment charge, the date and amount of the next scheduled payment, and the number of remaining scheduled payments.

(6) If the contract of loan is prepaid in full by cash, a new loan, or otherwise before the final installment date, the portion of the charges applicable to the full installment periods following the installment date nearest the date of prepayment shall be refunded. Any default or deferment charges which are due and unpaid may be deducted from such refund. The tender by the borrower or at his request of an amount equal to the unpaid balance less the required refund must be accepted by the licensee in full payment of the contract. If judgment is obtained before the

final installment date, the contract balance shall be reduced by the refund which would be required for prepayment in full as of the date judgment is obtained. No refund of less than one dollar (\$1) need be made; no refund for partial prepayments need be made.

(7) If two (2) or more full installments are in default for one (1) full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the refund or credit which would be required for prepayment in full on such installment date. Thereafter, in lieu of charging, collecting, or receiving charges as provided in subsections (1) to (6) inclusive of this section, charges may be charged, collected, and received as provided by subsection (8) of this section until the contract is fully paid.

(8) In lieu of computing and collecting charges as provided in subsections (1) to (6) inclusive of this section, a licensee may contract for, collect, and receive on loans of fifteen thousand dollars (\$15,000) or less charges as permitted in subsection (1) of this section computed on the unpaid principal balance of the loan from time to time outstanding. Such charges shall not be paid, deducted, received in advance, or compounded but shall be computed, collected, and received only on unpaid principal balances for the time actually outstanding. The definition of a month and of a day in subsection (2) of this section shall apply for the purposes of such computations.

(9) If part or all of the consideration for a contract of loan is the unpaid principal balance of a prior loan with the same licensee, then the principal amount payable under such contract of loan shall not include any unpaid charges on the prior loan except such charges which have accrued within sixty (60) days before the making of such new contract of loan and may include the balance remaining after giving the refund required by subsection (6) of this section.

(10) In addition to the charges provided for in this subtitle, no further charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing shall be directly or indirectly charged, contracted for, or received, except the lawful fees actually and necessarily paid out by the licensee to any public official for filing, recording, or releasing in any public office any instrument securing the loan; the identifiable charge of premium for insurance provided for in KRS 286.4-560; or fees for noting or releasing a lien on or transferring a certificate of title to any motor vehicle offered as security for a loan made under this subtitle. If any amount in excess of the amounts authorized by this subtitle is charged, contracted for, or received, except as the result of an accidental or bona fide error, the lender shall have no right to collect or receive any charges whatsoever.

(11) No licensee shall induce or permit any borrower to split up or divide any loan nor permit any one (1) borrower to become indebted to him under more than one (1) contract of loan at the same time if the actual amount of the indebtedness on any one (1) of such contracts is in the amount or of the value of fifteen thousand dollars (\$15,000) or less and there is charged, contracted for, or received thereon, directly or indirectly, by any device, subterfuge, or pretense whatsoever, any interest, or consideration therefor greater than would otherwise be permitted by this subtitle.

(12) No licensee shall directly or indirectly charge, contract for, or receive any interest or consideration greater than the lender would be permitted by law to charge if he were not a

licensee hereunder upon any loan in the amount or of the value of more than fifteen thousand dollars (\$15,000) excluding charges, or in any case in which the licensee permits any individual as borrower, indorser, guarantor, or surety for any borrower, or otherwise, to owe on any loan or loans directly or contingently, or both, to the licensee at any time the sum of more than fifteen thousand dollars (\$15,000) for principal, excluding charges.

Credits

HISTORY: 2014 c 13, § 1, eff. 7-15-14; 1982 c 53, § 3, eff. 7-15-82; 1980 c 107, § 2; 1976 c 382, § 1; 1970 c 48, § 2; 1960 c 204, § 13

286.4-533 Authorized charges for extension of credit

Notwithstanding the provisions of KRS 286.4-530(10) or of any other law, in any extension of credit in accordance with this subtitle, the licensee may charge and collect the following:

- (1) A fee, or premium for insurance, in lieu of perfecting a security interest to the extent that the fee or premium does not exceed the fee payable to public officials for perfecting the security interest;
- (2) A bad check charge of twenty-five dollars (\$25), or the amount passed on from other financial institutions, whichever is greater, for any check, draft, negotiable order of withdrawal, or like instrument returned or dishonored for any reason by a depository institution, which charge licensee may charge and collect, through regular billing procedures, or otherwise from the borrower;
- (3) A reasonable attorney's fee, in connection with the collection of a loan, actually incurred by the licensee and paid to an attorney who is not an employee of the licensee;
- (4) A loan processing fee of five percent (5%) of the original principal amount of the loan. This charge shall be limited to a maximum of one hundred fifty dollars (\$150). Any charge collected up to and including fifty dollars (\$50) shall be nonrefundable. In the event of prepayment, any loan processing fee above fifty dollars (\$50) shall be subject to refund in the same manner as other charges pursuant to KRS 286.4-530(6). A loan processing fee may only be charged once on a loan or refinance within any ninety (90) day period;
- (5) An alternative to the default charge described in KRS 286.4-530(4), not to exceed five percent (5%) of each scheduled installment, or fifteen dollars (\$15), whichever is greater. Only one (1) charge may be collected for each scheduled installment; and
- (6) Costs or other expenses authorized for a secured party in accordance with KRS 355.9-207 and 355.9-607.

Credits

HISTORY: 2019 c 120, § 10, eff. 6-27-19; 2010 c 28, § 21, eff. 7-15-10; 2008 c 93, § 1, eff. 7-15-08; 2000 c 157, § 4, eff. 7-14-00; 1998 c 198, § 4, eff. 7-15-98; 1992 c 222, § 1, eff. 7-14-92

286.4-535 Closing costs collectible when liens on real estate taken as security

Notwithstanding the provisions of KRS 286.4-530(10) or of any other law, in any extension of credit pursuant to KRS 286.4-420 to 286.4-991 wherein the licensee shall take a lien on real estate for security for any loan under this subtitle, the licensee may charge and collect the following closing costs if they are bona fide, reasonable in amount and not for the purpose of circumvention or evasion of the provisions of this subtitle:

- (1) Fees or premiums for title examination, abstract of title, title insurance, survey, or similar purposes, if not paid to the lender or a person related to the lender;
- (2) Fees for preparation of a deed, settlement statement, or other document, if not paid to the lender or a person related to the lender;
- (3) Escrows for future payment of taxes, including assessments for improvements, insurance, and water, sewer and land rents;
- (4) Fees for notarizing deeds and other documents, if not paid to the lender or a person related to the lender;
- (5) Appraisal fees, if not paid to the lender or a person related to the lender.

Credits

HISTORY: 1982 c 53, § 7, eff. 7-15-82

286.4-540 Duties of licensee

Every licensee shall:

- (1) Deliver to the borrower at the time of making a loan, or to one (1) of them if there are two (2) or more obligors on the loan, a statement showing in clear and distinct terms the amount and date of the loan and the date of its maturity, the nature of the security for the loan, the name and address of the borrower and of the licensee, the schedule of payments or a description thereof, and the agreed charges or rate of charge on such loan provided, that when charges are contracted for under KRS 286.4-530(1), the statement shall show the cash advance and the amount of the note including charges, the additional charges contracted for in case of default or deferment and that a refund is required for prepayment in full;
- (2) Furnish to the borrower a receipt for each cash payment made on account of any such loan at the time each payment is made but no receipt need be given where payment is made by check or money order; and the use of a coupon book system shall be deemed compliance with this section;
- (3) Upon the repayment of the loan in full, mark indelibly with the word "Paid" or "Canceled" every obligation signed by the borrower and release or provide the borrower with evidence to release any mortgage which no longer secures an obligation, restore any pledge, and cancel and return every note and assignment given to the licensee by the borrower.

Credits

HISTORY: 1960 c 204, § 14, eff. 6-16-60

286.4-545 Agent for service of process

Every person licensed under this subtitle shall maintain an agent in this Commonwealth for service of process. The name, physical address, telephone number, and electronic mail address of the agent shall be filed with the application for licensure. The commissioner shall be notified in writing by the licensee at least five (5) days prior to any change in the status of an agent.

Credits

HISTORY: 2019 c 120, § 15, eff. 6-27-19

286.4-547 Compliance with federal and state laws; regulatory penalties

In addition to the requirements contained in this subtitle, every person or licensee shall comply with all applicable federal and state laws relating to financial services. However, the regulatory penalties utilized to address violations of this section shall be limited to those authorized in this subtitle.

Credits

HISTORY: 2019 c 120, § 17, eff. 6-27-19

286.4-550 Time of installment payments

The borrower may pay all, or any part of any loan equal to one (1) or more full installments, at any time during the regular business hours of the licensee, but the licensee may apply any such payment first to all accrued charges in full up to the date of such payment.

Credits

HISTORY: 1960 c 204, § 15, eff. 6-16-60

286.4-560 Insurance

(1) A licensee may request a borrower to insure tangible personal property, except household goods, offered as security for a loan exceeding three hundred dollars (\$300) under this subtitle against any substantial risk of loss, damage, or destruction for an amount not to exceed the actual value of such property or the approximate amount of the loan, whichever is greater, and for a term and upon conditions which are reasonable and appropriate considering the nature of the property and the maturity and other circumstances of the loan; provided such insurance is sold by a licensed agent, broker, or solicitor. The licensee may also request and secure credit property insurance on the tangible personal property, except that no part of the cost thereof shall be charged to the borrower unless the insurer agrees that it will not exercise its right to subrogation against the borrower under the licensee's policy.

(2) A licensee may also request, provide, obtain, or take as security for any loan obligation insurance on the life, unemployment, health, or disability, or all, of the borrower, or two (2) of them if there are two (2) or more. Life insurance shall be in the approximate amount of the indebtedness scheduled to be due the licensee under the loan contract. Not more than one (1) policy of life insurance may be written in connection with any loan transaction under this subtitle. The aggregate amount of periodic benefits payable by any unemployment, health, or disability insurance provided, obtained, or requested by the licensee in the event of unemployment or disability, as defined in the policy, shall not exceed the aggregate of the scheduled installments and the waiting period provided in such policy must be fourteen (14) days or longer. The premium rate for insurance provided under this section shall be reasonable in relation to the benefits provided and shall be filed with the commissioner of insurance. The commissioner of insurance shall, within thirty (30) days after the filing of any premium rate, disapprove such premium rate if it is excessive in relation to the benefits. In determining whether to approve or disapprove any premium rate, the commissioner of insurance shall give due consideration to the unemployment, mortality, and morbidity costs with respect to such insurance on borrowers under this subtitle or similar acts in other states, a reasonable margin for underwriting expenses and profit and contingencies to the insurer, and cost and compensation to the licensees for providing and servicing such insurance, plus the premium taxes payable on such insurance.

(3) In accepting any insurance provided for by this section as security for a loan the licensee, its officers, agents, or employees may deduct the premiums or identifiable charge therefor from the proceeds of the loan, which premium or identifiable charge shall not exceed the rate filed with the commissioner of insurance and not disapproved and remit such premiums to the insurance company writing such insurance and any gain or advantage to the licensee or any employee, officer, director, agent, affiliate, or associate from such insurance or its sale shall not be considered as additional or further charge in connection with any loan made under this subtitle. The arranging for and collecting of an identifiable charge shall not be deemed the sale of insurance.

(4) Every insurance policy or certificate written in connection with a loan transaction pursuant to subsection (2) of this section shall provide for cancellation of coverage and a refund of the premium or identifiable charge unearned upon the discharge of the loan obligation for which such insurance is security without prejudice to any claim. Such refund shall be under a formula filed by the insurer with the commissioner of insurance.

(5) Whenever insurance is written in connection with a loan transaction pursuant to this section, the licensee shall deliver or cause to be delivered to the borrower a policy, certificate, memorandum, or other disclosure which shall show the coverages and the cost thereof, if any, to the borrower within thirty (30) days from the date of the loan.

(6) All such insurance shall be written by a company authorized to conduct such business in this state and the licensee shall not require the purchase of such insurance from any agent or broker designated by the licensee nor shall the licensee decline existing coverages which equal or exceed the standards of this section.

Credits

HISTORY: 2014 c 58, § 1, eff. 7-15-14; 2010 c 24, § 665, eff. 7-15-10; 1992 c 222, § 3, eff. 7-14-92; 1982 c 53, § 4; 1970 c 48, § 3; 1960 c 204, § 16

286.4-570 Wage purchases; assignment of compensation

(1) The payment of fifteen thousand dollars (\$15,000) or less in money, credit, goods, or things in action, as consideration for any sale, assignment, or order for the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall be deemed for the purposes of regulation under this subtitle, a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall be deemed for the purposes of regulation under this subtitle interest or charges upon such loans from the date of payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this subtitle.

(2) No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, when taken as security for any loan made under this subtitle, shall be valid unless the amount of the loan is paid to the borrower simultaneously with its execution. Under any assignment of or order for the payment of future salary, wages, commissions, or other compensation for services given as security for a loan made under this subtitle, there shall not at any time be collectible from the employer of the borrower more than ten percent (10%) of the amount then owing the borrower for any such salary, wages, commissions or other compensation for services.

Credits

HISTORY: 1982 c 53, § 5, eff. 7-15-82; 1980 c 107, § 3; 1970 c 48, § 5; 1960 c 204, § 17

286.4-580 Prohibited conduct; no contract or loan without scheduled repayment; lien on real estate as security

(1) No licensee shall take any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor take any note or promise to pay that does not disclose the date and amount of the loan obligation, a schedule or description of the payments to be made thereon, and the rate or aggregate amount of the agreed charges; nor take any instrument that is incomplete at the time the loan is made.

(2) No licensee shall enter into any contract of loan under this subtitle unless:

(a) The borrower agrees to make any scheduled repayment of principal within:

1. Sixty (60) months and fifteen (15) days from the date of making the contract if the principal amount of the loan exclusive of interest and charges is three thousand dollars (\$3,000) or less; or

2. One hundred and twenty (120) months from the date of making the contract if the principal amount of the loan exclusive of interest and charges exceeds three thousand dollars (\$3,000); and

(b) The contract provides for repayment of the amount lent in substantially equal installments at approximately equal periodic intervals of time, except that when appropriate for the purpose of facilitating payment in accordance with the seasonable nature of obligor's main source of income, payments may be deferred or omitted, if all other payments are increased in a manner that the other payments are substantially equal in amount and sufficient in the aggregate to retire the loan in the period of months as provided in this subsection.

(3) No licensee shall take any mortgage or other lien instrument upon real estate as security for any loan under this subtitle in which the principal is three thousand dollars (\$3,000) or less, unless the lien is subject to a prior mortgage.

Credits

HISTORY: 2019 c 120, § 11, eff. 6-27-19; 1982 c 53, § 6, eff. 7-15-82; 1970 c 48, § 4; 1960 c 204, § 18

286.4-590 Licensee to make annual report

Each licensee shall annually on or before January 30, file with the commissioner a report for the preceding calendar year. The report shall give information with respect to the financial condition of the licensee and other relevant information as the commissioner may reasonably require. In the event any person or affiliated group of corporations holds more than one (1) license in the state, he, she, or they may file a composite annual report in lieu of separate reports for each licensed office. The report shall be made under oath in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of the reports.

Credits

HISTORY: 2010 c 24, § 666, eff. 7-15-10; 2008 c 93, § 2, eff. 7-15-08; 2000 c 157, § 5, eff. 7-14-00; 1986 c 331, § 45, eff. 7-15-86; 1970 c 48, § 6; 1960 c 204, § 19

286.4-600 Licensee's records; retention; notice of cessation; custodian of records; request for destruction; withholding or altering records

(1) (a) To enable the commissioner to determine whether the licensee is complying with the provisions of this subtitle, and with the administrative regulations promulgated under it, each licensee shall keep and use in his or her business books, accounts, records, or card systems in accordance with sound accounting principles and practices.

(b) Unless applicable state or federal law requires a longer retention period, the licensee shall, after making the final entry in them, preserve any books, accounts, records, or card systems:

1. For at least two (2) years; or
2. For at least three (3) years on loans secured by residential property.

(2) (a) Any licensee that intends to cease operation of any office or offices licensed under this subtitle shall:

1. Give the commissioner at least thirty (30) days' prior written notice of the cessation of operations, along with a plan for ceasing operations that is sufficient to safeguard the interest of the public; and
2. Designate a custodian of records prior to the cessation of operations, who shall:
 - a. Agree in writing to serve in that capacity and to comply with the requirements of this section; and
 - b. Notify the commissioner of:
 - i. The designation of a custodian, including but not limited to the custodian's name, physical address, electronic mail address, and telephone number; and
 - ii. The physical location where the records required to be kept under this subtitle will be preserved.

(b) This subsection shall not apply to changes of location authorized under KRS 286.4-460.

(3) (a) Except as provided in paragraph (b) of this subsection, all records referenced in this section shall be made accessible to the commissioner or the commissioner's designated representative upon demand.

(b) Records held by a designated custodian under subsection (2) of this section shall be made accessible upon five (5) business days' written notice.

(4) If good cause is demonstrated, the commissioner may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period required under this section.

(5) It shall be unlawful for any person to knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete any books, records, or other information required to be preserved under this subtitle for the purpose of obstructing a subpoena issued, or investigation or examination conducted, by the commissioner.

Credits

HISTORY: 2019 c 120, § 12, eff. 6-27-19; 2010 c 24, § 667, eff. 7-15-10; 1998 c 198, § 5, eff. 7-15-98; 1960 c 204, § 20, eff. 6-16-60

286.4-605 Confidential and privileged documents; commissioner's powers; privilege or claim of confidentiality not waived

(1) The following shall be considered confidential by law and privileged, and shall not be subject to disclosure under the Kentucky Open Records Act, KRS 61.870 to 61.884:

- (a) Reports of examination, and correspondence that relates to a report of examination, of a licensee;
- (b) Investigations, and records that relate to an investigation, conducted under this subtitle;
- (c) Annual reports filed under KRS 286.4-590; and
- (d) Any confidential and privileged documents, materials, reports, or information received by the commissioner pursuant to subsection (5)(c) of this section.

(2) Confidential and privileged documents shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless the commissioner determines or, after notice to the commissioner and a hearing, a court of competent jurisdiction determines that the commissioner would not be prejudiced.

(3) (a) Subject to paragraph (b) of this subsection, all other documents, materials, reports, or other information that are provided to or filed with the commissioner under this subtitle shall be open to public inspection.

(b) Notwithstanding paragraph (a) of this subsection, the commissioner may, as authorized by the provisions of KRS Chapter 61, classify as confidential or withhold from public inspection for a period of time, as he or she considers necessary, any information which in his or her judgment, the public welfare or the welfare of any licensee or its customers requires to be withheld.

(4) Neither the commissioner nor any person who receives documents, materials, reports, or other information while acting under the authority of the commissioner shall be required to testify in any civil action concerning any confidential documents, materials, reports, or information.

(5) In order to assist in the performance of the commissioner's duties, the commissioner may:

(a) Use, disclose, or make public the confidential and privileged documents or information referenced in subsection (1) of this section in furtherance of any regulatory or legal action brought as part of the commissioner's official duties;

(b) Share the confidential and privileged documents referenced in subsection (1) of this section with other state and federal regulatory agencies, or with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidential and privileged status of the documents in accordance with any sharing or use agreements referenced in paragraph (d) of this subsection;

(c) Receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information, from other state, federal, and international regulatory agencies, the related associations, affiliates, or subsidiaries, and from local, state, federal, and international law enforcement authorities, except that the commissioner shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or information; and

(d) Enter into agreements governing the sharing and use of confidential documents and information when the sharing or use is serving a legitimate governmental need or is necessary in the performance of a legitimate governmental function, including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.

(6) No waiver of any applicable privilege or claim of confidentiality in documents, materials, reports, or information shall occur as a result of the disclosures authorized under this section.

Credits

HISTORY: 2019 c 120, § 18, eff. 6-27-19

286.4-610 Commissioner's power to issue administrative regulations and examine licensees; investigations; enforcement of subpoena; powers of commissioner

(1) The provisions of this subtitle shall be enforced by the commissioner, who may promulgate administrative regulations in accordance with KRS Chapter 13A for the proper conduct of the business licensed under this subtitle. All regulations of general application shall state the date of promulgation and the effective date. A copy of every regulation shall be sent to all licensees before the effective date thereof and a copy shall be kept in an indexed permanent book in the office of the commissioner as a public record.

(2) (a) The commissioner shall examine the affairs, business, office, and records of every licensee at least once during every twenty-four (24) month period, but not more frequently than once during every twelve (12) month period. Every licensee shall pay a reasonable fee sufficient to cover the cost of each routine examination based upon fair compensation for time and actual expenses.

(b) The commissioner may also conduct investigations of licensees or persons within or outside of the state as the commissioner deems necessary to discover violations of this subtitle or to secure information necessary for its proper enforcement.

(c) For the purpose of making examinations or investigations under this section, the commissioner and his or her representatives:

1. May:

- a. Compel the attendance of any person or obtain any documents by subpoenas;
- b. Administer oaths and affirmations; and
- c. Examine under oath or affirmation all persons whose testimony he or she may require, relative to the loans or business of the licensee; and

2. Shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this subtitle.

(3) (a) The commissioner may investigate any person who is or appears to be engaging in the business regulated by this subtitle without first securing a license.

(b) For the purpose of investigations of unlicensed persons, the commissioner or his or her representative may:

1. Compel the attendance of any person or obtain any documents by subpoenas;
2. Administer oaths and affirmations; and
3. Examine under oath or affirmation all persons whose testimony he or she may require, relative to the loans or business of the person.

(4) If any person fails to comply with a subpoena issued by the commissioner under this section, the commissioner may petition the Franklin Circuit Court or any court of competent jurisdiction for enforcement of the subpoena.

(5) In order to carry out the purposes of this subtitle, the commissioner may:

(a) Retain examiners, auditors, investigators, attorneys, accountants, or other professionals and specialists to conduct or assist in the conduct of any examination, investigation, or enforcement action; and

(b) Use, hire, contract, or employ public or private analytical systems, methods, or software.

(6) The authority of this section shall remain in effect whether a person acts or claims to act under any licensing law of this subtitle or acts or claims to act without such authority.

Credits

HISTORY: 2019 c 120, § 13, eff. 6-27-19; 2010 c 24, § 668, eff. 7-15-10; 1998 c 198, § 6, eff. 7-15-98; 1960 c 204, § 21, eff. 6-16-60

286.4-613 Effect of conformity with notice, opinion, or interpretation of commissioner

No licensee shall be subject to any liability for any act or omission made in conformity with a written notice, opinion, or interpretation issued by the commissioner.

Credits

HISTORY: 2010 c 24, § 669, eff. 7-15-10; 1992 c 222, § 2, eff. 7-14-92

286.4-615 Commonwealth or its employees not liable for failure to disclose financial condition of consumer loan company

In undertaking the examination of a consumer loan company neither the Commonwealth of Kentucky, the commissioner of the Department of Financial Institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor, or other obligor of said consumer loan company by reason of said examination or omission of said examination to fully and effectively disclose the financial condition of said consumer loan company, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 286.4-610 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors, or other obligors of said consumer loan companies.

Credits

HISTORY: 2010 c 24, § 670, eff. 7-15-10; 1998 c 198, § 7, eff. 7-15-98; 1980 c 357, § 2, eff. 7-15-80

286.4-620 Public policy relating to loans of \$15,000 or less; loans outside state

(1) Any loan in the amount of fifteen thousand dollars (\$15,000) or less for which there has been charged, contracted for or received a greater rate of interest, discount or consideration, except as provided for by statute, is against the public policy of this state.

(2) No such loan made outside this state shall be enforced in the state and every person participating therein in this state shall be subject to the provisions of this subtitle, but this section does not apply to loans legally made in any state, country, commonwealth, territory or district.

Credits

HISTORY: 1998 c 198, § 8, eff. 7-15-98; 1982 c 53, § 8, eff. 7-15-82; 1980 c 107, § 4; 1970 c 48, § 7; 1960 c 204, § 22

286.4-640 Effect of future amendment of this subtitle

This subtitle or any part thereof may be modified, amended or repealed so as to effect the cancellation or authorization of any license or right of a licensee hereunder, provided that such modification, amendment or repeal shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

Credits

HISTORY: 1960 c 204, § 24, eff. 6-16-60

286.4-990 Civil penalties; actions by commissioner against violators; recovery of penalties and fees

(1) (a) For any repetitive violation of this subtitle or an administrative regulation promulgated under this subtitle, or any willful violation of an order of the commissioner entered under this subtitle, the commissioner may levy a civil penalty against any licensee.

(b) The civil penalty shall not be less than two hundred fifty dollars (\$250) or more than two thousand five hundred dollars (\$2,500) per violation, plus the state's costs and expenses for the examination and prosecution of the matter, including reasonable attorney's fees and court costs.

(2) (a) For an occurrence of consumer harm by any licensee resulting from any violation of this subtitle, administrative regulation promulgated under this subtitle, or order of the commissioner entered under this subtitle, the commissioner may:

1. Order any remedy authorized in subsection (4) of this section; and
2. Levy a civil penalty against the licensee if the total amount of consumer harm exceeds one thousand dollars (\$1,000).

(b) The civil penalty shall be:

1. The lesser of:
 - a. One thousand dollars (\$1,000) per consumer harmed; or
 - b. Ten percent (10%) of the total cumulative amount of ordered rescission, restitution, refund, disgorgement, or the recovery of expenses; and
2. The state's costs and expenses for the examination and prosecution of the matter, including reasonable attorney's fees and court costs.

(3) (a) The commissioner shall levy a civil penalty against any unlicensed person who violates any provision of this subtitle, administrative regulation promulgated under this subtitle, or order of the commissioner entered under this subtitle.

(b) The civil penalty shall not be less than two thousand five hundred dollars (\$2,500) or more than seven thousand five hundred dollars (\$7,500) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.

(4) The commissioner may order rescission, restitution, refund, disgorgement, recovery of expenses, and direct such other affirmative action as the commissioner deems necessary against any licensee or person who violates any order issued by the commissioner or any provision of, or administrative regulation promulgated under, this subtitle. The commissioner shall have jurisdiction to institute an action in Franklin Circuit Court or any court of competent jurisdiction for the enforcement of these orders.

(5) The commissioner may notify the Kentucky Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky in Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.

Credits

HISTORY: 2019 c 120, § 21, eff. 6-27-19

286.4-991 Penalties

(1) Any person who shall engage in the business regulated by this subtitle without first securing a license therefor shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000). Any loan contract made in violation of this subtitle shall be void and the lender shall have no right to collect any principal, charges or recompense whatsoever.

(2) Any person who willfully violates any rule or order of the commissioner authorized under this subtitle, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge. This section shall not be deemed to limit the power of the commissioner to revoke any license as provided in KRS 286.4-490.

Credits

HISTORY: 2010 c 24, § 672, eff. 7-15-10; 2000 c 157, § 6, eff. 7-14-00; 1960 c 204, § 26, eff. 6-16-60